ANWAR v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) October 14, 1964]

[Singapore — Magistrate's Appeal No. 189 of 1964]

Criminal Procedure — Sentence — Caning — Imposition of — Circumstances of time and place to be considered.

The facts in this case were that during the second of the recent disturbances in Singapore on a day when the curfew was on the appellant with six or seven others were at Alexandra Road or off it. On being arrested after a chase and searched a knuckle duster was found in his possession. He was sentenced to one year's imprisonment and four strokes of the rotan. On appeal as to sentence,

Held: (1) the sentence of one year's imprisonment erred on the side of being excessive and in the circumstances should be reduced to one of three months;

(2) the court will normally not impose a sentence of caning unless violence has been used; but this was not a case where the court should take into consideration whether or not violence was in fact used; the circumstances of the time and place must be considered and as it was not the first of such disturbances but the second when the ordinary public in the State was subject to or witnessed such violence; taking that fact into consideration, the sentence of caning in this case was a perfectly proper one.

MAGISTRATE'S CRIMINAL APPEAL.

J. B. Jeyaretnam for the appellant.

Francis T. Seow (Senior Crown Counsel) for the Public Prosecutor.

Wee Chong Jin C.J.: This is probably the first case that has come up to this court with regard to the question of sentences in respect of persons who have committed offences during the period of the two disturbances we had in Singapore this year.

This offence was committed in September this year which was the second unfortunate episode we had here.

The facts were that during this episode on a day when the curfew was on the appellant with six or seven other male persons were at Alexandra Road or off it and on being arrested after a chase and search a knuckle duster was found in his possession. I cannot treat this as a case where the appellant was, so it is submitted, under stress and emotion during that particular period, and had thereby armed himself with an offensive weapon purely for the purpose of self defence. There was no question at that time of his having to be armed or have something in his possession which he could use as a weapon of defence during that period. There were no extenuating circumstances in that before that he might have met some trouble or was ever in a position where he had to defend himself because of the high feelings engendered during that period. That being so, possession of an offensive weapon during those unfortunate times must and can only be looked at as a very serious matter.

The question I have to decide now is whether the sentence of one year's imprisonment and four strokes of the rotan is a proper sentence and not manifestly excessive in those circumstances.

As regards the sentence of one year's imprisonment I am inclined to the view that it perhaps erred on the side of being excessive and I will accordingly reduce it to one of three months' imprisonment.

With regard to the sentence of caning although I accept that the court will normally not impose a sentence of caning unless violence has been used, I do not think this is a case where the court should take into consideration whether or not violence was in fact used. The circumstances of the time and place must be considered and we all know that this was not the first of such disturbances but the second when the ordinary public in this State was subject to or witnessed such violence as I hope we will never see again. Taking, as I must take, that fact into consideration, the sentence of caning in this case in my opinion is a perfectly proper one and that sentence must remain. I will accordingly allow the appeal only to the extent that the prison sentence is reduced to one of three months.

Prison sentence reduced; sentence of caning confirmed.

Solicitors: *David Marshall.*

YEGAPPAN v. DISTRICT COUNCIL CENTRAL, PROVINCE WELLESLEY (No. 2)

[O.C.J. (Hepworth J.) October 16, 1964]

[Penang — Originating Motion No. 6 of 1964]

Administrative law — Certiorari — Excess of jurisdiction — Acts of District Council whether administrative or judicial.

Municipal Ordinance, (Cap. 133), ss. 143 and 144A — Building By-Laws — Non compliance with Ordinance and Bye-Laws.

This was a motion for an order of *certiorari* to remove to the court and quash a decision of the District Council Central, Province Wellesley, approving the site plan and building plans constituting a housing scheme in Penang. The applicant was the owner of a bungalow and land adjacent to the land to be affected by the housing scheme. A preliminary point was raised and argued that on the facts of the case *certiorari* did not lie on the ground that the acts of the council were administrative and that in any event the evidence did not disclose that the council had acted in excess of jurisdiction. It was further argued that the council did not act in excess of its jurisdiction but what it had done was to misconstrue the bye-laws and had wrongfully exercised its jurisdiction.

Held: (1) as the applicant in this case was given a hearing for the purpose of considering what his submissions and objections were and the decision was arrived at after hearing him, the discretion which was exercised